

THE NATION

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The SEVENTH EXECUTION of CARYL CHESSMAN

One Man's Eleven-Year Fight For Justice

by Gene Marine



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LETTERS

Is He Angry? . . .

Dear Sirs: It was disappointing to find Mr. Hatch's review of the film of *Look Back in Anger* [*The Nation*, Oct. 3] to be a restatement of the confused and irritable reactions that so many respectable critics expressed toward Mr. Osborne's play. . . .

Opinions may vary as to the changes wrought in filming, but if, as I believe to be the case, *Look Back in Anger* in both forms deserves consideration as an important artistic achievement, a comparison seems called for. Of particular interest are the film's excision of much of the marvelously offensive political and theological dialogue of the original, the addition of an incident involving racial discrimination (which effectively places Jimmy Porter's anger in a social context and to some extent clarifies its motivation and meaning) and the director's semi-successful attempt to utilize film techniques to convey visually, rather than by Osborne's dialogue, the dominant theme of disgust with well-faring purposelessness and stupidity.

The review does, however, illustrate a common American attitude toward the play. In its excited denunciation of the reality of the "Angry" character and in its excessive concern with the sexual motivation of the hero, it testifies to the power of Jimmy Porter to undermine easy liberal complacency, and manifests the national determination to medicate out of existence the human symptoms of social sensitivity; it is quick to recognize in the character of Gary the silence and pliability that mark the current version of the compassion-deserving man, but cries out defensively against genuine protest.

PAUL BRESLOW

New York City

. . . Or Merely Noisy?

I'm sorry if I sounded irritable, but I cannot agree that I am confused. Protest is now in such short supply that there is a temptation to cheer anyone who breaks the dinnerware without asking what evils he is protesting. (See Harold Clurman's review of *The Gang's All Here*, page 239, this issue.) Jimmy Porter is not at odds with society; he is at odds with his mother-in-law. He is not angry, he is hysterical; and what he cannot stand is to have his tantrums scorned. I doubt that his defense of the Indian peddler does much to "place his anger in a social context";

he drops it as soon as it has given him a chance to let off steam. If it is held that Osborne's play shows how society drives sensitive men out of their minds, then where does it describe how society did that to Porter? I mentioned his sexuality because the picture mentions it in almost every scene; he is obsessed and terrified by sex, and there are hints from his childhood to explain the phobia. But no one alleges that the play is concerned with mental illness. I do not think that I am defensive in the presence of protest, but neither will I welcome its counterfeit. Will someone who thinks that *Look Back in Anger* is an important social document say what evils are exposed when Jimmy Porter blows his trumpet or beats his women? There is no past or future, rhyme or reason, to Porter's protest and that, I think, is why he weighs no more than the sum of his symptoms.

ROBERT HATCH

Auto As Public Utility

Dear Sirs: Professor Robert P. Weeks makes the following statement in his article, "Detroit Discovers the Consumer" in the September 19 issue:

GM's Peter Kyropoulos regards the auto industry as a public utility whose products will come under some sort of federal supervision as surely as the railroads did.

Most certainly, I made no such statement to Professor Weeks. I do recall his asking me a question about railroads in the over-all transportation picture, and I believe I pointed out their unenviable position as a public utility.

I am at a loss to know how Professor Weeks could have attributed such an expression to me on the basis of anything I said to him in the course of our telephone conversation of some weeks ago. Not only do I not hold such views, but am personally convinced that "federal supervision" over the auto industry—or any other competitive industry, for that matter—would be a calamity from the standpoint of the American consumer.

PETER KYROPOULOS

Technical Director, G.M. Styling
Warren, Mich.

Dear Sirs: I based the statement I attributed to Mr. Kyropoulos on notes I carefully took while he spoke to me. The relevant section of my notes recording his remarks reads:

Auto ind (industry) pub utility today. Like RR's 50 yrs. ago. Trend is to interference via agency like ICC.

In transforming his remarks from a direct quote to an indirect one, I follow-

ed the journalistic convention of substituting a neutral term (supervision) for a loaded one (interference).

In translating his "trend" to "surely" I may have been guilty of making federal supervision seem to be more of a sure thing than the word "trend" suggests. However, Mr. Kyropoulos' describing the auto industry as a public utility and, moreover, likening it to the railroads fifty years ago (which was entirely his idea, by the way) justified, I felt, my use of "surely" in preference to the weaker, vaguer "trend."

ROBERT P. WEEKS

Ann Arbor, Mich.

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EDITORIALS

Woes of Space

If Congress were in session, the Soviet feat of looping an instrumented rocket around the moon would be greeted by the usual attacks on "budgeteers" and calls for a "crash" program of spending in space. Actually, much of our space spending has been of the crash variety in the literal sense: it has been precipitate, and it has failed to achieve its objectives.

But it is worth investigating, at least, whether perhaps the Soviets know more about setting up an effective technological bureaucracy than we do. This has little or nothing to do with their lack of democracy or our devotion to it. In the last analysis, all industrial organization is authoritarian: orders must be given, however politely, and obeyed in accordance with a chain of command. Like sensible businessmen beset by competition, we should study the techniques of our competitor, the more assiduously since he is ahead for the time being. We should also look for the faults in ourselves, and some of these are so obvious that a dispassionate eye can scarcely overlook them. The basic trouble in our space adventure has been the destructive rivalry among the military services and the unfitness of any of them to assume a role for which they were never intended. The Advanced Research Projects Agency (ARPA) was established to coordinate the development efforts of the services in the space field. It might have succeeded (it was not given time enough even to fail decisively) if the Air Force had not been bent on pre-empting the field for itself. The ARPA has been more or less emasculated by the Department of Defense decision to turn over to the Air Force primary responsibility for the development, production and launching of space boosters (rockets for getting a vehicle off the ground) and associated equipment. This looks like the beginning of the end for the ARPA. But, on the basis of past performance, the assignment of greater space powers to the Air Force is not a cause for rejoicing. The Air Force is the most glamorous, aggressive and greedy of the services, but the Army Ballistic Missile Agency (ABMA), for one, has on the whole done a better job with its facilities than the Air Force. The Air Force's next move may be to try to take over the ABMA. But wouldn't it be better to turn these activities over to a single, predominantly civilian agency, after

the Russian manner? We already have the nucleus of such a body, the National Aeronautics and Space Administration, but it has no authority. The Department of Defense would be better advised to look into the pros and cons of this proposal (which is neither new nor original) instead of giving the Air Force the key to the solar system.

Unfair, Inept and Mischievous

If the President invokes Taft-Hartley in the steel strike, as seems likely, the unfairness of the law and the inappropriateness of its key procedures will be demonstrated once again. Only now, with excess inventories dwindling, are the pressures of the strike being felt on the industry side. Intervention at this time and under these circumstances, therefore, can hardly fail to weaken the position of the striking union. But unfairness aside, the remedy is inappropriate. There is no need for fact-finding. The facts are known; the public has been thoroughly briefed on the issues. And should production be resumed in the wake of an injunction, the pressures on the industry to settle will be temporarily removed. The end result of an injunction might, therefore, be the "last offer" ballot provided by the Act. But what happens then? "With the dispute completely deadlocked by the vote," observes Princeton's Dr. Richard A. Lester in a letter to *The New York Times* (October 4), "the injunction is lifted, permitting a strike that allegedly imperils the nation's health and safety to be resumed. Then, if necessary, the whole matter is submitted to Congress for a (presumably political) settlement." Here, then, is the basic weakness of Taft-Hartley: it is ill-conceived from the point of view of bringing about early settlements of strikes that, if prolonged, might endanger the nation's economy. Invocation of Taft-Hartley in the steel strike will confirm organized labor's contention that the procedures of the act are unfair, inept and mischievous.

The Sword of Damocles

Only a few weeks ago the Western alliance was in a turmoil over Communist aggression in Laos, which was said to threaten the peace of the world. A U.N. expeditionary force was demanded in stentorian tones. Calm-

er counsel prevailed and only a fact-finding commission was sent. It now appears that there are no facts to find and Habib Bourguiba, Jr., one of the delegates, has quit the commission. The St. Louis *Post-Dispatch* headlines the story "Laotian Charges of Aggression Folding Up; Real Story Political." A struggle is going on for control of the country, but it is predominantly, if not entirely, an internal affair. With little other than American support, the Royal Laotian Government decided to suppress its dissident minorities by embarking on a tough anti-Communist line and blaming the ensuing shooting on North Vietnam and Communist China. Failing to get the upper hand in the skirmishes which took place, the royal highbinders appealed to the U.N., where Uncle Sam was sure to give a sympathetic ear and an automatic majority.

This might all be regarded as comedy calculated to enliven the international scene, but the sinister part of the affair is the automatic response of the American press and radio whenever the bloody shirt of anti-communism is waved. The latest report of *The New York Times*, buried inside and describing the collapse of the Laotian charges, was only a few paragraphs. A few weeks ago even the sober *Times* was devoting banner headlines and tons of newsprint to this synthetic war scare. These wild-eyed, frenzied build-ups, founded on nothing, may never lead us into an actual world war, but, if so, it will be no thanks to the State Department or—it would seem—to the C.I.A.

Come On In, the Water's Fine

We commend to the public, and more particularly to the members of the American Newspaper Publishers Association, two articles by Mrs. Dorothy Schiff, publisher of the *New York Post*, entitled "My Secret Life with J. Edgar Hoover." The articles serve as an introduction to a series on the FBI and its Director which is currently appearing in the *Post* — almost a year to the day since the series was originally announced. Mrs. Schiff offers evidence to prove that J. Edgar Hoover sought, through an intermediary who was an advertiser in the *Post*, to suppress the series. It is also charged that FBI investigators called at the office of the New York Newspaper Guild, when the series was first announced, seeking information about one of the reporters assigned to the story. The implications of these statements should be of vital concern to every member of the ANPA — and while editorial anvils may yet ring with denunciations of this crass attempt to silence a publisher through advertising pressure, to date the silence has been deafening.

However, we confidently predict that, some minor unpleasantnesses aside, the *Post*, its publisher, editor and reporters, will escape unscathed in printing its series. In fairness to Mr. Hoover we would like to make

it a matter of record that *The Nation* suffered no known penalties, retaliations or reprisals as a consequence of having demonstrated, a year ago, that the FBI and its chief were legitimate subjects for a journal of opinion. True, some friends of Mr. Hoover denounced us (there was a tell-tale similarity to the denunciations), but these same professional screamers have denounced us before. And so we say to the lords of the American press, come on in, the water's fine. The public is genuinely interested in Mr. Hoover and the work of the FBI and the press should gratify this quite legitimate curiosity. It can be done with impunity.

The Chessman Case

With the publication of Fred J. Cook's article "Does the Death Sentence Prevent Crime?" in our issue of March 10, 1956, *The Nation* resumed a campaign against the death penalty which we do not intend to abandon until substantial progress has been made toward the abolition of this monstrous penalty. As part of this campaign, most of this issue has been devoted to an analysis of the Chessman case — not because we are convinced of the defendant's innocence, but because the facts vividly illustrate a prime aspect of the case against capital punishment. The best of legal systems can occasionally break down; now and then the processes of such a system can become hopelessly snarled. This is what happened in the Chessman case. For eleven years, law-enforcement agencies played a cat-and-mouse game with Chessman which resulted in his being sentenced to death not once but seven times, a state of affairs that, under any reckoning, constitutes cruel and inhuman punishment. California's Governor Edmund G. Brown should not permit this latest sentence to be executed on October 23.

Live Now, Pay Later

The credit-card economy has been carried to its apogee by a young inventor who, until he conceived his brilliant idea, was a \$55-a-week clerk in the opulent city of New York. Only nineteen, the unknown drudge ran \$50 in original capital into a glorious \$10,000 whirl of travel, plush hotel accommodations, elegant clothes, champagne and, it may be surmised, the happiness which only woman can bestow. M. Cinderella, as we shall call him, obtained his first credit card in August from a neighborhood branch of the Chase Manhattan Bank, where he had a modest checking account. Apparently he used this card only for legitimate purposes, but here the brain of the born inventor went into action. Cinderella saw in a store window a sign urging him to apply for a higher type of credit card known as Carte Blanche, giving the fortunate possessor the facilities of the Hilton hotel chain and its associated shops, car rental services, night clubs and other aids

to the good life. Cinderella applied. The actual invention, however, consisted in his discovery that one need not pay at all. Cinderella visited Las Vegas, Montreal, Miami and Havana. He liked it better than clerking. In Montreal, he bought a \$600 fur stole for a girl he met on his pleasant journey, using the invaluable Carte Blanche, of course. Whether Carte Blanche would ever have caught up with him seems doubtful, but Cinderella needed small sums for shoe shines and the few other necessities not provided by the credit card. Consequently, he cashed rubber checks in the amount of a few hundred dollars, and this old-fashioned device proved his undoing. He forgot that he had already cashed one check at the Hotel Plaza in New York and returned there with a second (\$120); the hotel management incontinently called the cops. "Easy Credit Bounces Him into the Jug," the headline reads. If the Carte Blanche people have a grain of charity in them, they will provide a small allowance on their future cards to enable young men in their *Wanderjahre* to avoid bouncing into the jug.

Say It Ain't So

The tearful plea of the newsboy to Shoeless Joe Jackson in the White Sox baseball scandal of forty years ago may now be echoed, *mutatis mutandi*, by any of the millions of suckers, including ourselves, who trustingly believed in the honesty of TV quiz programs,

in particular the now defunct "Twenty-One." "Into the vacated myth of quick success," wrote Dan Wakefield in *The Nation* of March 30, 1957, "the jackpot quiz shows came with an answer. They came to an audience hungry for glory, excitement, surprises and reassurance that the man in the anonymous street might still suddenly rise to a place in the golden sun." It is perhaps symbolic that even this simulation of fulfillment for the common man turned out to be a swindle, and yet, what else was to be expected? Why should showmen of the most opportunistic kind, advertising questionable nostrums for profit, be burdened with silly scruples? As for the network executives, they have a choice of two pleas, in neither of which can they take much pride. Either they were as crooked as the promoters or they were as gullible as the outsiders whom they helped to deceive. And where was the press, democracy's traditional organ in ferreting out frauds and deceivers? Belatedly, Frank Holeman of the New York *Daily News* Washington staff points a moral. "Any dumbbell knows," he writes, "that the longer you keep a lid on a garbage can, the more it stinks when it's finally opened." The highly paid TV executives had a chance last summer, after the grand jury presentment, to let the facts be known. They passed it up, and Chairman Oren Harris of the House Legislative Oversight subcommittee, saw the opening and took it. The damage to the television industry will be all the greater. No one else will be very sorry.

New Yardstick for 1960's Hopefuls.. by Robert G. Spivack

NIKITA S. KHRUSHCHEV came to the United States during an "in-between" season. The summer was over, but the World Series had not yet begun. Congress had closed up shop, hastily. But the 1960 Presidential hopefuls were not yet prepared to admit that they were open and ready for business, or even that they were hopeful.

Up to the time of the Soviet Premier's arrival, our politicians were engaged in the usual rituals of "practical" men. They were "thinking ahead" to 1960, but the scope of their thinking was often limited to a

search for gimmicks that could be passed off as vital campaign issues. The political managers were looking for those things that, while projecting a favorable image of their candidates, would at the same time avoid arousing animosity in any quarter.

The whole field of "issues" was explored: the recession, labor "reform," monopoly, tight-money scandals, expansion of the economy, "balancing" the budget, the race to outer space, overhauling the education system, civil rights. Realists at national party headquarters—and privately, even the aspirants themselves—were ready to concede that none of these issues was electrifying the public. Each appealed only to a limited segment of the voters; it was doubtful that a national election could be said to hinge on any one of them. The per-

sonalities of the candidates seemed destined to be considered much more important.

Then came Mr. K. By the time of his departure, he had created "the issue" for 1960. He called it "peace." Others said, more accurately, that it was future relations with the USSR. Some cynics saw it as the beginning of another foreign "give-away" program and treated it as "the feeding and care of the Russian bear."

Essentially the question was: How will the next President deal with the Soviet Union? Try as they will, none of the candidates are likely to escape being asked this question. Nor, the stakes being what they are, is the public in a mood for frivolous and evasive answers.

It is doubtful that any of the candidates will thank Mr. K. for the

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fact that because of him, almost overnight the narrower issues and petty politics started to fade. Suddenly each candidate finds that the standard by which he will be measured is his ability to cope with Mr. K., or his successor, without appeasing the Russians on the one hand, or reviving the cold war on the other. Their difficulties are made no less by the fact that there will be circumstances over which they will have no control, notably shifts in Soviet policy, a renewal of the power struggle within the Communist Party of the Soviet Union, or the foreign policy of Red China.

When the balance sheet is finally drawn up on the Khrushchev tour, the tremendous shift in the domestic politics of this nation may loom as its single most important item. Each candidate is already engaged in assessing what it means to his own chances, as well as to the future of the country. None seems quite to have figured it out yet. The political and psychological items that went into the making of the "K-bomb" are too complex to lend themselves to ready and easy analysis. All the good feeling that now exists could change rapidly. That candidate who is irrevocably committed to any fixed position might find himself a political has-been before he ever had the chance to become anybody.

AS BOTH parties and every candidate grope for the answers to the problems left in the wake of the Soviet Premier's tour, several things seem fairly clear. The starting point, so far as the 1960 Presidential campaign is concerned, is one of public relief that tensions have lessened for the nonce, coupled with skepticism that the cold war is really nearing its end after fourteen years of crisis. Along with this is an awareness among officeholders that \$40 billion—two-thirds of the tax dollar—is being spent on armaments, research and other aspects of "defense." What economic dislocations might result from abrupt ending of the cold war? We have no "war party" in this country, but we have long had a "short-of-war party" which includes men otherwise as divergent in their viewpoints as Senator Stuart Symington, Dean Acheson, Senator

Thomas Dodd of Connecticut, Senator Styles Bridges, former Senator William Knowland, Harry S. Truman and Congressman John McCormack of Massachusetts.

OF THE Presidential possibilities, only Senator Hubert Humphrey, as head of the Senate's disarmament subcommittee, has spoken of the urgency of "preparing for peace" if the golden age of disarmament is really upon us. Symington, on the other hand, feels that the Administration is trifling with deep public emotions and deluding us about the prospects of peace. His line of reasoning, as I understand it, is that if the country had not been so complacent about Soviet technological achievements, the Russians would never have matched or gotten ahead of us—and we would have avoided in that case what seems to him the humiliating spectacle of the American President breaking bread with the Soviet dictator. What his position will be as the campaign develops, and as the world picture changes, remains to be seen. My impression is that he believes we can avoid war with the Communist world only by continuing to pour money and talent into the arms race. Underneath all this, I suspect, is his belief that war is inevitable.

Against this viewpoint is the Eisenhower theory, only now being voiced more or less publicly, that there are too many American businessmen with a vested interest in continued world tension. Sometimes he seems to be saying that our huge armament program results, in almost equal portions, from Soviet misconduct and propaganda by our "munitions lobby." The President has reportedly used the term "munitions lobby" in private conversations, but even long before he did so, White House Press Secretary Jim Hagerty was using it. He sandwiched it in once on a CBS panel program conducted by Eric Sevareid, although the panelists did not take him up on it.

Hagerty probably sees exploitation of the "munitions lobby" theme as an opportunity to tag the Democrats as the party of the arms-makers. If Symington should be the candidate, it will be only a short step

to labeling the Democrats as the "war party," a tactic Hagerty would be happy to see used.

However, the President's personal position is understood to be somewhat different. As an old Army man, he has long witnessed the waste at the Pentagon and found it appalling. Basically a conservative on domestic policy, improved world conditions also would give him a new opportunity to push his "balance the budget" argument. On top of all this there still lingers the influence of Charles (GM) Wilson, who never could persuade himself that all the wastefulness in the Defense Department resulted from Soviet policy as much as from vested economic interests of certain industrialists and Pentagon job-holders. Wilson was never one to wear blinders, even though GM itself was a prime defense contractor.

EISENHOWER, of course, need not think about running for office again, but for the younger men in the Republican Party the reversal of the old Dulles policies creates difficulties and hazards that they probably would rather have laid aside until after 1960. The only Republican who can find genuine satisfaction in the course the Administration is now probing is Harold Stassen. His position vis-à-vis the Russians seemed at last to have triumphed. For the moment, however, he is out of the national picture, running for Mayor of Philadelphia.

Of all the Republicans actually or remotely being considered for the nomination, the biggest headaches are those of Vice President Richard M. Nixon. As the dust settles from the Khrushchev tour, occasionally he finds himself belabored by his right-wing associates who tend to blame him for much of what has ensued since his own mission to Moscow. Of the epithets they have privately hurled in his direction, "Tricky Dicky" is the mildest. The situation apparently became so acute that Senator Barry Goldwater had to reassure a Chicago meeting of ultra-rightists that Nixon was dismayed by the invitation to Mr. K. and that deep in his heart he is still a "conservative." Goldwater may not be the brightest of the right-wingers, but he is a literal man.

When he said Nixon had told him that that was the way the Vice President felt about the invitation, it is probable that he was giving an accurate account of the conversation.

Nixon himself felt compelled to correct this interpretation and he offered a defense of the Administration's decision to invite Mr. K. But there is no doubt that he was relieved when, the day after Mr. K. departed, the Associated Press said the Soviet leader "appears to have nominated Vice President Nixon as one American who doesn't want to end the cold war."

So far as it is possible to know where Nixon stands on any issue, the Vice President appears to be playing the traditional politician's "wait and see" game. If no violent reaction sets in to the Khrushchev visit, Nixon will take the bows for his part in the cold-war thaw. If things should freeze up again, then he can always point to what his good friend Goldwater reported was his "real" position.

GOVERNOR Nelson Rockefeller is in the happy position of not being a federal officeholder. He managed to avoid participation in the Soviet Exhibition at the New York Coliseum, or meeting Mikoyan, yet he was able to get across his own message when Mr. K. came to the big city. The message, reduced to essentials, was simply that the American way of life was not capitalism but "freedom."

Since he is not a "candidate," Rockefeller has not yet had to express himself in specific terms as to what he might do about the Soviet Union if he were President. There are some friends of the New York Governor who feel that he is fatalistic about an eventual showdown between the two systems. As evidence of his attitude, they cite his apparent preoccupation with construction of nuclear-bomb shelters. Others maintain that the Governor has always been essentially optimistic about foreign relations, as he is about other things. They insist that his whole record as a White House assistant, and earlier as Coordinator of Inter-American Affairs, has been to stress development, with less and less emphasis on military aid.

At this stage there is no "party line" on how to deal with the Soviet Union; the issue cuts across both major parties, just as the debate between isolationism and intervention did nineteen years ago. But if it is correct that the "Russian issue" poses tough problems for Nixon, the GOP front-runner, it is probably even a tougher problem for Sen. John F. Kennedy, currently the Democratic front-runner. During the weeks Khrushchev was here, there was little evidence of either the Kennedy profile or courage. He was just absent.

A FEW days after the Soviet Premier arrived, Kennedy did speak at Cincinnati. He listed the "six great challenges" that will face the nation from 1960 on—none included the challenge represented by the Kremlin. Only after Mr. K. had left the country did Kennedy mention him—and then only to tell a Rochester audience that, in his opinion, the Khrushchev-Eisenhower talks had produced "nothing tangible, enforceable or essential to the achievement of our foreign-policy objectives."

Since Estes Kefauver seems to have taken himself out of the running this year, only Lyndon Johnson and Adlai Stevenson remain among the leading Democratic possibilities. Johnson, weary from a long and fruitless Congressional session, did not this time talk or act as if he considered himself the titular head of the Democratic Party. The extent of his participation in the K. affair was a group photograph with Khrushchev after the Premier's meeting with the Foreign Relations Committee. Except for one venture into the hazy atmosphere of space satellites, which won him a title as the "Senator from Outer Space," Johnson has been content to leave the big issues to other men. He said, of course, that we must back the President during his talks with the Soviet leader, but he accepted no responsibility for the talks or developments since.

Between Kennedy's skeptical position and Symington's more bellicose attitude, Stevenson has adopted a let's-feel-our-way-forward approach. It seems to bear no resemblance to that of any of the other Presidential possibilities. From his

writing and speeches, it is obvious that Stevenson has devoted much thought to future Soviet-American relations. His journeys to Russia do not seem to have had the purely political quality that was attached to the trips taken by some other American visitors. From what he has said and written, it seems clear that Stevenson was among the first to believe that the death of Stalin marked the beginning of a more mature and relaxed attitude inside Russia. Eventually he seemed to think it would be reflected in her relations with the West. He has never gone overboard on the subject, but Stevenson's attitude seems to have been hopeful ever since Mr. K. rose to power.

HOW AMERICAN politicians treat "the issue" will depend to a great extent on what Mr. K. and his colleagues themselves do to relax tensions. If they create crises, whether in Berlin or the Far East, as a means of exerting pressure on this government, the chances are that the backfire will be extremely serious.

The Russians would do well not to underestimate the American temperament at this present delicate stage of U.S.-USSR relations. Before Khrushchev came there were many high-ranking officials who hoped the trip might be canceled. During his tour there were those who wondered if there might be a repetition of the Japanese Kurusu-Nomura double cross on the eve of Pearl Harbor. Even the slightest indication of bad faith could unleash a wave of anti-Soviet feeling that might even surpass the era of McCarthyism.

But if this does not happen, the public will expect the candidates to develop thoughtful and complete programs for dealing with Russia and the economic effects of ending the cold war. How do we coexist? How do we compete? Is it necessary to sacrifice freedom for some people in Europe to maintain peace? Should we put forth a set of Western "demands" for Europe and Asia? Do we accept the *status quo*?

Provided nothing happens between now and 1960 to heighten tension again, some of the candidates might even come up with some answers.

Seventh Execution of Caryl Chessman . . by Gene Marine

Los Angeles

ON JANUARY 19, 1948, in the hills above Pasadena, Mrs. Regina Johnson sat in a car on a quiet road with a friend, Jarnigan Lea. Another car approached, flashing a red spotlight, apparently of the type used on police vehicles; it stopped, its occupant alighted and, on reaching the Lea car, displayed a gun. Taking Lea's wallet and car keys and Mrs. Johnson's purse, he then ordered the girl into his own car, parked just behind Lea's. The bandit ordered her to "commit an act of a sexual nature proscribed by Section 288a of the Penal Code." Afterward, he took a five-dollar bill from her purse, returned the purse and Lea's car keys, and let her out of his car. He drove away.

Three nights later, in another isolated area, a bandit approached in the same way a car containing Frank Hurlbut and Mary Alice Meza. Told by Hurlbut that neither had any money, the bandit neither searched them nor asked for the man's wallet or the girl's purse. He took Miss Meza in his car to another lonely spot—leaving her purse with Hurlbut—and again, sexual acts were committed. The girl was later released near her home.

The next day, two men entered a clothing store at gun point; the owner and a clerk were forced into a stockroom in the rear and their wallets taken. The clerk was brought back to the front of the store, and forced to open the cash register. After taking some clothing in addition to the money, the men left but not before one of them had struck the store owner with a gun.

The crimes are here described as they were by the State of California. There were other "red light bandit" crimes, and Los Angeles newspapers, never noted for restraint, played them big. Under pressure, the police were broadcasting a description every few hours, based on descriptions

given by the victims. The call was for a white man

. . . possibly Italian, swarthy complexion, 25-35 years, five feet six to five feet ten, 150-170 pounds, thin to medium build, dark brown wavy hair, close cut, dark brown eyes, crooked teeth, narrow nose with slight hump on bridge of nose, sharp chin, possible scar over right eyebrow. Armed with a .45 old-looking black automatic. . . . Uses gray or beige club coupe. . . . A red spotlight has been seen on left and right side of car. . . .

A few hours after the clothing-store robbery, police in Hollywood chased and caught a Ford sedan answering the description. Trapped, two men in the car climbed out and ran. Both were caught, the driver after a bullet had grazed his skull.

The car proved to have been stolen. In the glove compartment were an old .45 and a pen-type flashlight (the "red light" bandit had used one of these). In the car itself were clothes which were later identified as those taken in the robbery earlier that day. The car had a spotlight. The driver, who had been stunned by a bullet, was Caryl Chessman, whose case is now the most litigated in the history of American criminal law.

CHESSMAN and the man with him were both relatively small-time hoods; when arrested, they were both on parole from Folsom Prison (Chessman on an armed robbery charge). Being together was a parole violation for each of them, and meant going back to Folsom—which, Chessman says, is why he fled the police. He has never said whether he knew the car was stolen, or that the .45 was in the glove compartment, or that the clothes in the back had also been stolen.

He does say—and admittedly it sounds a far-fetched tale—that it was two other fellows; i.e., that he got into a car with three other men in it, along with some clothes; that one got out soon thereafter; that three of them were still in the car when the police spotted it; that the

third man had gotten out just before the car was captured, and that the third man was the one to whom the car "belonged." Chessman has never identified the "third man."

Chessman also says that, at the time, he *was* committing crimes. A gambler in another county, he says, wanted to move in on a police-protected bookmaking setup in Los Angeles; this gambler had hired Chessman to hijack the L. A. bookies and their collectors. The police, Chessman says, knew this—and knew also that he wasn't the "red light" bandit. They threatened him with that charge, he says, to make him talk about what he was really doing; he called their bluff; and suddenly they had both gone too far to retreat.

Chessman was held for three days at the Hollywood police station, where he says he was severely beaten. Naturally, the police deny this, and point out, with justice, that allegations of police persecution and brutality, like patriotism in another context, are often the last refuge of the scoundrel. For eleven years, Chessman has been asking that lie-detector tests be given both him and the policemen involved on this question, as well as to him alone on the question of his guilt or innocence in the sex-attack crimes. No one has ever called that bluff—if it is a bluff.

SECTION 209 of the Penal Code, California's "Little Lindbergh Law," said at the time that anyone who

. . . seizes, confines, inveigles . . . kidnaps or carries away any individual . . . with intent to . . . commit . . . robbery . . . shall suffer death [or life imprisonment without possibility of parole] at the discretion of the jury [if] the person . . . subjected to such kidnaping suffers . . . bodily harm.

Careful reading shows that under that law—as the State Supreme Court was to rule in 1950—any robbery is a kidnaping, and any robbery in which the person robbed gets hurt is a capital offense. But the name given the law at the time of passage

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—“Little Lindbergh Law”—shows that that wasn’t what the legislature had in mind. This was proved when, after the 1950 decision, the legislature immediately amended the law to get rid of the robbery-is-kidnaping interpretation.

An incidental result of this bit of legal history is that Chessman is probably doomed to die for something that is no longer a capital crime. Certainly the clothing-store robbery would no longer be a capital crime in California. And it has always been the case in this state that a criminal can kidnap a girl and carry her from one end of the long state to the other, violating Section 288a every twenty-five yards, and not be subject to a death penalty. That penalty in the Chessman case rests on three requirements, all of which must have been present for the penalty to hold up: First, that the bandit “kidnaped” the victims under the language above; second, that his intent in doing so was robbery; third, that the victims suffered bodily harm.

Under the new law, it is doubtful that the state would charge that forcing Mrs. Johnson from one car to the other was “kidnaping.” In the Meza case, (1) no robbery took place, and (2) if a robbery attempt had been involved (the bandit’s only pertinent words were “This is a stickup”), it was abandoned before the kidnaping took place. The girl’s purse was left in the car, and the bandit made no attempt to take any of her or Hurlbut’s property.

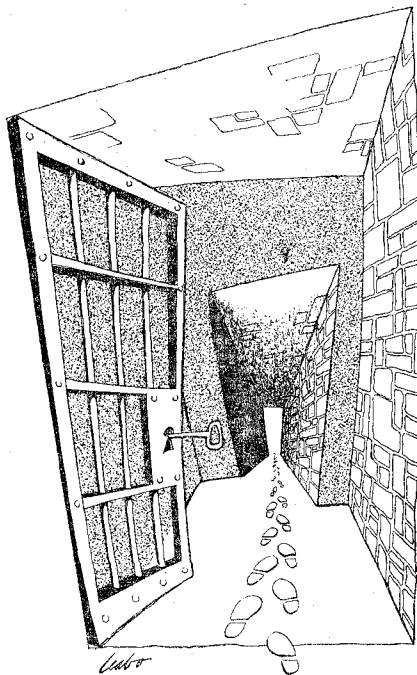
It would come as a shock to most Californians to be told that Chessman has never been charged with killing anyone, and that he was not condemned to death—officially—for any activity remotely sexual.

MARY ALICE MEZA identified Chessman not in a line-up, but when he was brought to her house, handcuffed. Other victims, he says, identified him (again, not in a line-up, but alone) in response to police phone calls to the effect that “We’ve got the red light bandit—come down and identify him.” Some of the victims said he was *not* the man, but Chessman claims he was never given the names of these so that he could subpoena them.

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Two attorneys advised Chessman to “cop a plea”—plead guilty to some charges in return for a state agreement not to press others. He refused, claiming an unwillingness to accept the stigma of conviction on sex-crime charges. A third attorney, Ward Sullivan, agreed with his position, but asked an exorbitant fee.

Feeling that he needed more than the routine representation of a Deputy Public Defender (Chessman wrote later, “I needed more than a watchdog . . . I needed an inspired advocate . . . a dedicated champion



willing to fight for me every inch of the way”), Chessman decided to defend himself. The Master Calendar Judge questioned him sharply, to determine whether Chessman’s intention was to stall and ask later for a continuance. He ended by sharply warning Chessman to be ready on the trial date.

He wasn’t. One of his later legal briefs (in which he speaks of himself in the third person) gives his reasons:

. . . jailers refused his repeated requests to be allowed to interview witnesses or other persons connected with the case at the jail. . . . They also refused his repeated requests to possess and use personal legal books . . . papers, clerical supplies or a typewriter. . . .

They also refused, he says, to let him write to the judge to complain.

(These statements of Chessman are not contested.) The defendant then sought out a fourth lawyer, made an arrangement for him to be paid with money to be borrowed by Chessman’s father—and Chessman’s father fell ill. The trial date appeared, and Chessman asked for a continuance.

With his father and the lawyer in court to back him up, Chessman said he couldn’t help being unprepared, and asked to subpoena jailers to testify to this effect. The judge said it was Chessman’s own fault for turning down a public defender, and ordered the trial to continue.

At least this is what Chessman says happened. The record is extremely unclear on this and other points—but that part of the story comes later.

DEFENDING himself with the aid of Deputy Public Defender Al Matthews as legal adviser (not as counsel), Chessman found himself under orders to remain seated at the defendant’s table (though Deputy District Attorney J. Miller Leavy, of course, was free to walk around). Aside from the fact that Chessman and a witness could not examine evidence together, or the fact that in talking to the jury Chessman had to lean out and around the prosecution table, the situation almost certainly tainted the jury’s concept of the traditional presumption of innocence.

The accused’s request for a daily transcript of the proceedings was denied on the ground that the prosecution had not joined him in the request. Judge Charles W. Fricke (now deceased) later testified that he could not remember any other capital case in which he had denied a daily transcript—and Judge Fricke was renowned for the number of capital cases he handled. Testimony in subsequent hearings shows that the prosecutor had the court reporter’s notes available to him throughout the trial, and that he therefore had the advantage of a transcript without asking the court formally to make it available.

Without such a transcript, of course, the defendant was unable to go back and check verbatim testimony. With hindsight, we can see now that the judge’s refusal of the

transcript made the whole "Chessman case," as we now know it, possible.

Finally, Judge Fricke informed the participants, on the day that argument for the defense was to begin, that he would allow only one counsel to address the jury on each side. Matthews was unfamiliar with some aspects of the case, and Chessman was under orders not to leave his chair.

This point alone should raise an eyebrow. Section 1095 of the Penal Code seems plain enough: "If the indictment or information be for an offense punishable with death, two counsel on each side may argue to the jury." The state now contends that Matthews wasn't a "counsel"—but the record, such as it is, clearly shows that the judge was willing to let either Matthews or Chessman argue, but not both.

The jury had the option on the penalty, as we have seen. On May 21, 1948, they decided that Caryl Chessman must die. On June 23, with Chessman not yet formally sentenced, Ernest R. Perry died.

PERRY was the court reporter. His notes of the trial, at the time of his death, were in shorthand. Some pages—a little less than a third—had been dictated for transcription before his death. Most had not.

California law requires that every death-sentence case automatically go to the State Supreme Court on appeal. It requires also that the record on appeal—the verbatim transcript of the trial—be prepared by the reporter who took the notes, and that it be certified by him to be "correct." A dead court reporter can't do that very well. But the law provides no alternative procedure. Therefore, when Chessman was formally sentenced two days after Perry's death, he moved for a new trial, because no adequate record could be prepared. Judge Fricke denied the motion, and ordered a record prepared through the use of what he called "human ingenuity."

The late Chief Judge William Denman of the U.S. District Court of Appeals was to write in 1955:

How important California regards this transcription and certification by the reporter is apparent from the

fact that in *civil* cases the death of the reporter before his transcription and certification gives the trial court the discretionary power to set aside the judgment and order a new trial [Citation]. By some quirk in California legislation this does not apply to criminal cases. [From a certification of probable cause for appeal, *Application of Chessman* (1955), 219 F.2d 162, 164].

"By some quirk in California legislation," Chessman went to San Quentin under a sentence of death which still hangs over him more than eleven years later. No execution date could be set until the State Supreme Court heard the automatic appeal, and no automatic appeal was possible until a transcript was forthcoming.

On the recommendation of the prosecutor (and over the formal protest of an association of Los Angeles court reporters, who contended the notes were unreadable), Judge Fricke appointed a reporter named Stanley Fraser to complete transcription of the Perry notes. Fraser had first received the notes from Leavy "some time in July of 1948," had studied them for "two weeks, maybe ten days," and had "concluded I could make an accurate transcription" (quoted from Fraser's testimony at a 1958 hearing). Leavy told the judge that Fraser and Perry had been friends and that Fraser could read Perry's notes "as well as his own." No one asked Chessman or any representative of his whether there was any objection to Fraser.

ON SEPTEMBER 7, 1948, negotiations were concluded between Fraser and Los Angeles County, under which Fraser was paid, by his own later testimony, "approximately \$10,000" for the job—considerably more than the statutory fee. Chessman's appeal that such a proceeding was invalid was denied. In the course of the hearing, Leavy filed an affidavit promising that Chessman would be allowed to be present when the transcript was "settled"—*i.e.*, officially accepted—in Judge Fricke's court. But he wasn't. In the first days of June, 1949, with no one present except Judge Fricke, Leavy, Fraser, and the court reporter then on duty, the Fraser transcript was accepted.

It went to the State Supreme Court for the automatic appeal, certified not as "correct" (as the law requires) but as "correct according to the best of my ability."

The record, by the way, shows that in the interim Chessman asked Fricke that any "raw transcript" by Fraser be furnished to him, Chessman. It never was. It was later testified that Fraser showed his "rough draft" to Leavy, however, consulting with the prosecutor about it, and that the "rough draft" was later destroyed.

Chessman insists that the Fraser transcript is all wrong about his request for a continuance (which goes directly to the question of whether he was allowed a fair trial); about his wanting to subpoena certain witnesses and records; about the testimony of some of the police witnesses; about his objections to a number of things, including the consolidation of eighteen counts against him for trial all at once (important because if he didn't object to it in trial court, he can't object to it on appeal). Except for one point—the question of whether a certain witness was or wasn't cross-examined—his erstwhile "legal adviser," Matthews, backs him up on his complaints. So does the attorney who was in court when he requested the continuance at the trial's beginning.

Most important, Chessman says the behavior and the statements of the prosecutor and judge are all wrong in the Fraser record. Leavy, says Chessman, was far more abusive and legally out of bounds than the record shows—and as it is, the State Supreme Court was obviously worried about it. At one point they said that Leavy's actions might have involved "reversible error" except that Chessman's guilt was otherwise shown (another eyebrow-raising contention); on another occasion the same court admitted excesses in the prosecutor's behavior but said he had been goaded into it by Chessman's "bold technique" of conducting his own defense.

In the case of the judge's instructions to the jury, Chessman claims that the judge made it appear that the death penalty was mandatory. He advances other procedural objections, involving such questionable

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prosecution tactics as the introduction of direct evidence on rebuttal, generally frowned upon in criminal practice but defended by Leavy as the only way to deal with "a Chessman." Here, too, the State Supreme Court clucked mildly but refused to reverse.

CHESSMAN lost the "automatic appeal," took it to the United States Supreme Court—getting the first of his six stays of execution to do it—and lost there, too. He then began to attack the validity of the transcript, and the procedure by which it had been prepared, in federal courts. The first court turned down his petition for *habeas corpus*, but an Appeals Court judge thought the case strong enough to be heard, and Chessman's execution was stayed again—three days before the second execution date.

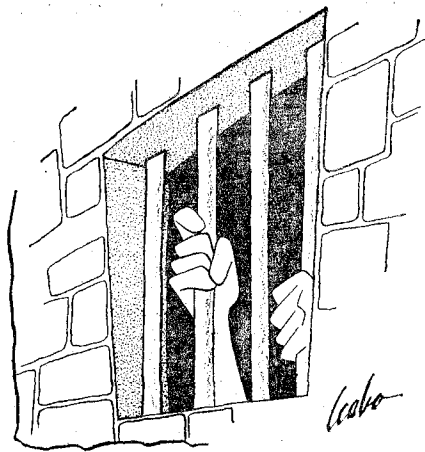
It was nearly a year later, on May 28, 1953, when the Ninth Circuit Court of Appeals ruled two-to-one against Chessman. He had begun *Cell 2455, Death Row*—the first of his three books—in the meantime, had acquired some legal assistance (notably that of Rosalie Asher), had taught himself quite a bit of law, and had made some private arrangements for funds.

Chessman took the Appeals Court decision to the U.S. Supreme Court, again without success. He was piling up information, but he had run out of courts, except for the slim legal possibility that *habeas corpus* might come from a branch of the State Superior Court other than Judge Fricke's.

His execution at this time was set for May 14. In despair, he asked Gov. Goodwin Knight for a ninety-one-day reprieve to give him time to prepare an application for clemency, incorporating his new information. It was the closest Chessman ever came to asking for mercy. Knight turned him down.

Chessman's book was published on May 3, and a cry against his execution went up around the world—but in California, a counter-cry demanding his death went up almost as soon and twice as loudly. The first two weeks of May found the Chessman case all over the California newspapers.

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On May 13, Berwyn ("Ben") Rice, a San Rafael attorney now helping to represent Chessman, appeared in the Superior Court of California, County of Marin, Judge Thomas F. Keating presiding. The judge listened, agreed that Chessman's *habeas corpus* application deserved a hearing—and stayed the execution.

But Assistant Attorney General Clarence Linn went before Judge Keating that same day with a motion to vacate the stay. Judge Keating took Linn's motion under advisement.

In his cell, Chessman waited, the earphones of his Death Row radio to his head. California waited with him. At 6:29 P.M.—fifteen and one-half hours before execution—Judge Keating denied Linn's motion. The stay remained in effect.

But Keating ultimately ruled against Chessman, and another execution date was set. Chessman appealed Keating's decision to the State Supreme Court. After that court had adjourned, its decision came down. The appeal was denied—nine days before the execution. Chessman's next move was to the U.S. Supreme Court, but he needed time.

Two state justices had sided with Chessman. Ben Rice went looking for Associate Justice Jesse Carter, vacationing in a remote part of the northern California forests. Traveling by car, then by helicopter, then by burro, Rice found Carter, showed him some of Chessman's information. With one day to spare, Carter used a tree trunk as a table on which to write out still another stay.

Assistant Attorney General Linn

moved that the State Supreme Court vacate Carter's stay—an action of dubious legal validity but of deadly purpose. The U.S. Supreme Court did not sit until October. If the stay were set aside, Chessman would be dead before they sat, and his final appeal would never be heard.

The State Supreme Court got out of settling the question of whether it *could* vacate the stay by waiting until the U.S. Supreme Court was back in session, and then denying Linn's motion without ruling on its merits. On October 25, 1954, the U.S. Supreme Court said "no" again, and Judge Fricke set still another execution date.

But possibly Judge Fricke hadn't read the eighteen-word kicker in the U.S. Supreme Court's decision. The Court denied *certiorari* "without prejudice to an application for a writ of *habeas corpus* in an appropriate United States District Court," and thus, in effect, told Chessman what to do next.

The application was made—and denied on January 4, 1955. Chessman again had ten days to live, but Chief Judge Denman of the District Court of Appeals found three separate probable causes for appeal and stayed the execution once more.

Denman's court, however, went against Chessman (two to one), and he went back to the U.S. Supreme Court. Another execution date had been set, and it, too, was stayed, this time by Associate Justice Tom Clark of the U.S. Supreme Court.

THROUGHOUT the history of the Chessman case, newspaper accounts have referred to his "miraculous cheating" of the death penalty, and to his astute use of "loopholes" and "technicalities" to keep himself alive. Actually, with the possible exception of Judge Keating's in May of 1954, none of Chessman's stays was anything but predictable. His execution had now been stayed six times:

1. After his automatic appeal to the State Supreme Court was denied, Justice Carter of that court granted a stay to let Chessman appeal his conviction to the U.S. Supreme Court.

2. That appeal denied, Chessman turned to the question of whether the transcript was accurate; the Fed-

eral District Court turned down a *habeas corpus* request, but the Ninth Circuit Court of Appeals thought he at least deserved a hearing, and Judge Albert Lee Stephens of that court granted a stay.

3. That appeal also denied, and the denial upheld by the U.S. Supreme Court, Chessman went with new information to the Superior Court of California, and got the stay from Judge Keating.

4. When Keating ultimately ruled against him, Chessman went again to the State Supreme Court, was denied, and asked for time to go again to the U.S. Supreme Court; Justice Carter granted a stay for that purpose.

5. As noted, the Supreme Court denied *certiorari* but pointedly told Chessman what to do next. He went into Federal District Court again—on the matter of the adequacy of the transcript, and with his new information—and was again denied; Judge Denman granted a stay to allow this decision to be appealed.

6. That appeal denied, Justice Tom Clark gave Chessman time to take the federal case on the transcript—not the state case now—to the U.S. Supreme Court.

Whether these were “technicalities” or “loopholes”—as is the popular impression in California—can be judged from subsequent events. In October of 1955, the U.S. Supreme Court granted *certiorari*, reversed the District Court of Appeals, and remanded the case to the Federal District Court for hearing. Had California’s press reported the case with any degree of accuracy, the “loophole” theory would have died on that date.

Even this action, of course, did not mean that Chessman’s new evidence on guilt or innocence, if he had any, would be heard. It simply meant that he was entitled to a hearing on the question of whether the transcript of his first trial was accurate. But Chessman had some information about this too.

For one thing, he had discovered that the substitute court reporter, Stanley Fraser, was (and is) a chronic alcoholic, and, on the occasion of his employment, had made misleading statements about his work record, with the effect that his

alcoholism was concealed. Further, Chessman found that Fraser—who got his job on the recommendation of prosecutor J. Miller Leavy—was (and is) the uncle of Leavy’s wife. There was nothing to indicate that either of these facts was known to Judge Fricke when he appointed Fraser. Evidence from other court reporters seemed to cast serious doubts on Fraser’s ability accurately to transcribe his own notes, much less anybody else’s.

On November 30, to the astonishment of Chessman’s attorneys, the District Court assigned the case to Judge Louis E. Goodman, the judge whose original decision had been reversed. Goodman had made several public statements castigating Chessman, and had left little doubt of his personal opinion in the case. Late in December, Chessman asked formally that Goodman disqualify himself. Goodman refused.

Chessman’s third book, *The Face of Justice*, details a series of harassments to which he and his attorneys were subjected in preparing for the Goodman hearings. Clearly California did everything it could, through one or another of its agents (prison officials included), to make Chessman’s preparation for the hearings as difficult as possible.

THE record of the hearings themselves is also instructive. The Chessman petition for *habeas corpus* was built squarely on the charge that Perry’s notes were “indecipherable to a large degree” and that Fraser was “incompetent to transcribe” them. That’s what the hearings were about. But Goodman, on several occasions, refused to allow the subject to be dealt with.

I don’t think [the Court said at one point] the Supreme Court . . . intended me to spend in this court days or weeks of time in determining the accuracy of this transcript. Whether they did or not, I am not going to do it.

The record makes plain that this hearing, seven and one-half years after the death sentence was first passed, provided the first look for Chessman or any representative of his at the Perry shorthand notes. Judge Fricke testified that, although he had heard on some authority that

the notes were untranscribable, he had taken Leavy’s word that Fraser could do it.

The judge hadn’t known about Fraser’s relationship to Leavy (there is testimony by Leavy in the record that says he did tell the judge; one of them is apparently mistaken). He had no idea of Fraser’s alcoholism, had acted on the representation that Fraser had worked *steadily* as a court reporter for many years (Fraser was later to testify that he had taken as much as a year off work because of drinking; other testimony indicated that fellow employees had been covering up for his alcoholic absences and incompetencies for years).

FRASER, from the record, might have been testifying for Chessman. He had on several occasions (perhaps more than twenty-five times, according to Leavy) checked his rough draft with the prosecutor, and had made changes at Leavy’s suggestion. Further, Fraser had checked his draft with two prosecution witnesses—with the knowledge, and in fact at the suggestion, of Leavy. (In other words: Outside of the court, and without the knowledge of the judge or the defendant, a part of the record had been built up through the collaborative efforts of the prosecutor, the prosecutor’s uncle-in-law, and two prosecution witnesses, both policemen.)

Two of the witnesses had been jurors at the original trial. They seemed to remember perfectly the judge’s instructions to the jury (there had been over forty), and, under cross-examination, to remember very little else. Both were clearly shown to be strongly biased. One had written a letter to a newspaper, demanding Chessman’s immediate death because he had driven Mary Alice Meza insane.

One of the most emotional aspects of the case has been the matter of Mary Alice Meza, one of the “red light” bandit’s victims, whose mother, now Mrs. Ruth Shaw, rarely misses a Chessman court hearing or an opportunity to tell reporters that her daughter, now a patient in the Camarillo State Hospital, cannot be cured until Chessman, her attacker, is executed. It is standard

Chessman-case mythology that the "red light" bandit attack drove the girl into the asylum, and the press has played this up. Actually, Miss Meza went to Camarillo more than a year and a half *after* the trial—about two years after the assault itself. Furthermore, the unfortunate girl had a previous history of mental disturbance.

The Goodman hearings ended on January 25, 1956. In February, Goodman stunned Chessman and his attorneys by denying *habeas corpus*. The attorneys felt (and feel) that they thoroughly discredited the state's witnesses, and completely established their case. All a reporter can say, in this space, is that the record is there.

Chessman appealed to the District Court of Appeals. He lost, two to one. On January 24, 1957, Chessman filed still another petition for *certiorari* with the U.S. Supreme Court. And two days later, according to Chessman, he planted his now-famous "time capsule."

On that date, he says (and Rosalie Asher confirms), he turned over to Miss Asher clear evidence of his own innocence, of the identity of the real "red light" bandit, and of police suppression—on condition that she not reveal it. If Chessman is vindicated, he gets the material back; if he's not, she is to reveal it (or, presumably, see to its being revealed) fifty years after California declares a moratorium on capital punishment. Asked why he doesn't get himself out of all this by making the information public, he insists that he's simply and stubbornly determined to prove his own innocence, not someone else's guilt; it is a matter of principle with him.

THE U.S. Supreme Court granted *certiorari* and later heard argument. On June 10, 1957, the opinion in *Chessman v. Teets* (1957), 354 U.S. 156 [Teets is warden at St. Quentin] was handed down, written by Mr. Justice Harlan. Anyone who has since that date expressed an opinion on the Chessman case without a clear knowledge of what this opinion said and meant is out of order.

Harlan's decision held that Caryl Chessman had, in fact, been denied due process of law for nine years,

and that there was no way to determine whether he was denied due process of law even before that. It ordered "an adversary hearing [i.e., one in which both sides are represented, with full rights to call witnesses, cross-examine, etc.] focused squarely on the issue of the adequacy of the transcript." Chessman, it said, "has never had his day in court upon the controversial issues of fact and law involved in the settlement of the record upon which his conviction was affirmed."

The malignantly imaginative newspaper picture of the evil genius, who had taught himself so much law that he was forever finding new loopholes in obscure statutes, disappears in the measured language of Justice Harlan.

And so the case wound up back in Judge Fricke's court with its strangest episodes yet to come. On August 20, 1957 (unknown to Chessman), Judge Fricke appointed a woman named Bessie Lill as an expert on the kind of shorthand Ernest Perry had used before his death. During the first week of September, Mrs. Lill got photostatic copies of the Perry notes and a copy of the Fraser transcript.

THE JUDGE agreed to appoint two experts chosen by each side. Chessman requested appointment of Frank Hanna, veteran court reporter and former head of the Success Shorthand School in New York City; then he ran out of experts. Los Angeles television newscaster Bill Stout mentioned on the air that Chessman needed experts in Pitman shorthand. The few qualified people were reluctant to associate with Chessman (as is shown in the transcript of the hearing); after some time, a housewife with a long background of shorthand experience reluctantly came forward. Her name was Molly Kalin.

On November 13, the hearing was turned over to Judge Walter R. Evans of Mono County, sitting in place of Judge Fricke at the latter's request (and over Chessman's protest; Chessman wanted the opportunity to have Fricke disqualified for bias). On November 25, the hearings began.

These hearings demand complete

reporting, impossible in this brief space.¹ Among many other things, the testimony shows these highlights:

Stanley Fraser testified that he had been one of the official reporters of the Los Angeles Superior Court from 1926 until 1953. He had been an old friend of the late Perry. He said that Perry wrote the Success system of shorthand, and that he himself wrote the Graham Pitmanic system, which was "very close."

In his work on the transcript, "Mrs. Fraser" had done much of the typing ("Mrs. Fraser," it develops, was not Mrs. Fraser legally until December of 1953; in 1956, Fraser had her committed to the Camarillo State Hospital, alcoholic and hopelessly insane).

IN 1949, at the original settlement hearings (with no one there to cross-examine, remember), Fraser had testified that he had "dictated and transcribed actual words which [he] found in the signs and symbols of Mr. Perry," and that he had not supplied "any words anywhere in this record of questions or answers or any statements of the Court."

But under cross-examination in 1957, Fraser admitted that he might have failed to transcribe hundreds of symbols because he couldn't read them. Directed to one spot by Chessman, he agreed that he had in fact skipped *eight lines* of symbols. Chessman showed him other spots; thirty pages of the hearing transcript are filled with Fraser's admissions that he had failed to transcribe particular symbols in particular places. He had added words to complete sentences, changed language where the notes didn't "make sense." He had credited statements to Leavy because he knew how Leavy spoke (though nothing in the notes said that Leavy was speaking). He had at one point changed Perry's record

¹So does the entire Chessman case. It hurts a reporter to leave out definite perjury by either a juror or an attorney; the absence of physical evidence tying Chessman to the crimes; psychiatric testimony on whether Chessman is the sex-crime type; testimonial contradiction between judge and prosecutor; the story of a man named Ortega who was arrested in 1956, and questioned about his association with the "red light bandit"; or any of several dozen other matters for which this report has no space.

on something Judge Fricke had said, because he, Fraser (who had not been at the Chessman trial), had decided that the judge hadn't meant to say it!

Perry, Fraser said, "might have left out half of these proceedings, and if there is not a line there to show it, how would I know what happened, since I wasn't there?" It is difficult, reading Fraser's testimony, not to get a picture of a pitiful, broken old man, groping for a lost respectability.

AND THEN came Bessie Lill, retired and nearing eighty, on whom the case turns today as it once turned on Stanley Fraser. In 1949, Leavy had told the judge that Fraser's record was "as accurate a record as Mr. Perry could have prepared." In 1957, state expert Bessie Lill brought into court eighty-three pages of her "findings," suggesting 1,862 changes (her word was "emendations"). And that was before cross-examination.

She had not included, she said, a number of places where Fraser had left hundreds of Perry's symbols untranscribed. If she'd put in "every single word, I would have had another volume here the length of *Gone with the Wind*, probably."

Perhaps her juiciest testimony came when Chessman asked her how come, on direct examination, she'd said she could "read and transcribe" the Perry notes, but on cross-examination had been unable actually to do so. Her "apperceiving mass," Bessie Lill answered, functions better on some days than on others.

Chessman's expert, Frank Hanna, testified (after a detailed analysis) that

... As the trial progressed, the quality of the reporting markedly and progressively deteriorated. ... The notes show repeated instances of apparent mental confusion and lack of coordination. ... Page after page ... show [it to be] almost if not quite impossible to decipher the outlines, much less to read them with any continuity. ...

That was about the original notes; of the Fraser record, Hanna said that it

... has been freely edited ... he has failed to transcribe at all

hundreds of outlines whose meaning I also am unable to determine. ... There is hardly a page of the transcript where he has not added connecting words or phrases ... there are hundreds of places where I believe the meaning placed upon particular outlines ... is not justified.

And there was still another point:

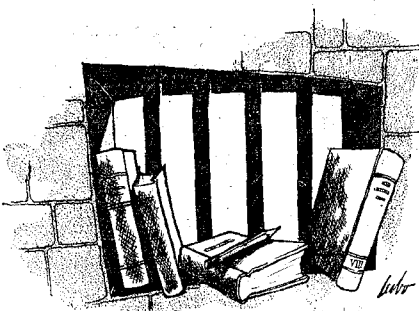
Mr. Fraser, or some one, has filled many pages of the note books with his own pencilled outlines.

In conclusion, Hanna said—lengthily—that the notes were no good, the transcripts were no good, and the sense of what had taken place at the trial must inevitably have been altered. Unable to shake him on cross-examination, Deputy District Attorney Crail pounced on the fact that he was Chessman's expert. Hanna testified that he had wanted to talk to Chessman before agreeing to serve. Crail asked him why.

Well, in the first place [Hanna replied] ... [Chessman] might perhaps have the impression that if I were appointed as an expert at his suggestion, that I might be favorably disposed to his side of the case, and I wanted to disabuse his mind of any such idea. ...

The prosecution recalled Bessie Lill and asked her to give a "reading" of four pages of the notes. She rattled them off, including a rendition in dazzling prose of a clumsy passage she'd haltingly stumbled through once before on the stand. On cross-examination she admitted to having been told in advance, by Crail, what she would be asked to do. She had spent, she said, "several hours" on each of "several days" preparing.

Chessman had her read other portions, then called Leavy. The prosecutor testified that events at the trial had *not* happened the way Bessie Lill's readings described them. One portion of the Lill readings,



Leavy was forced to agree, made no sense whatever.

Finally, Chessman got Mrs. Lill to admit that in her own eyes she was "committed to be a witness for the State" (when she got off the stand, she passed Crail with the comment, "I'm afraid I haven't been a very good witness for you this morning"). She was paid \$7,000 for her "expert" testimony, which has to be read to be believed.

CHESSMAN called Molly Kalin, who gave a blackboard lecture on the Pitman system for the judge, and made all her points about the transcript visual by continuing to use the board. Her summary said that "the meaning placed upon [the symbols] by the transcription cannot be reconciled or justified at all in my opinion." At one point, she copied parts of the notes on the board, wrote Mrs. Lill's rendition above them, and then showed how Mrs. Lill's words should have been written. The difference was immediately visible, dramatic and marked.

Molly Kalin, who reluctantly came to the Chessman case from a television appeal, now believes Chessman innocent.² One reason grew out of her examination of a page of notes (selected at random by the judge, at Chessman's request) which she analyzed on the blackboard. When she attempted to explain some scratched-out symbols, Chessman told her to ignore them, and any penciled notations; he was interested at that point in the original Perry notes.

But overnight, Mrs. Kalin had the opportunity to tell Chessman something. The scratched-out symbols were apparently Perry's. Different symbols — which were later transcribed — were added in, in "very clear ... and much smaller" writing that was "radically different." This had been done on several consecutive pages in several different places. No one has ever denied, disputed, or explained these notes, apparently in a foreign hand, which replaced Perry's original notes in the short-

²As does virtually everyone who has independently investigated the case; this reporter, whose investigation was comparatively brief, has at least serious doubts of Chessman's guilt.

hand record of the Chessman trial, and which now form a part of the official record.³

Fraser having testified that from September, 1948, to February, 1949 — when he had been preparing the transcript — he had not taken a drink, Chessman called Fraser's personal physician, who said Fraser had been an alcoholic throughout the period from 1947 to 1953. (In 1953, Fraser had been in the County Hospital, claiming among other things that the Mafia was after him.)

Chessman showed, by subpoenaing Fraser's work record from the court secretary, that at least one judge would not have Fraser in his court, and that another judge had had him replaced. Fraser himself testified that he often didn't go to work because of drinking, and that in the early 1940s "I took a sabbatical year without pay, a couple of years."

The work record showed that misconduct charges had been filed against Fraser and had been scheduled to be heard by a group of judges; but the charging papers and the papers showing disposition of the case had disappeared. Chessman called several witnesses, attempting to find the papers. Nobody knew anything.

ON FEBRUARY 28, 1958, Evans denied Chessman's motion for a new trial, and said the transcript was a valid one, subject to certain corrections (a list was attached to the judge's order). Mostly, they were the emendations of Bessie Lill and her "apperceiving mass." One of the corrections Evans ordered incorporated, incidentally, was the gibberish reading of which Leavy had testified that it made no sense.

Chessman's reaction to the Evans decision is set forth starkly in his appeal:

Let us assume that at the beginning of the hearing . . . Judge Evans told appellant:

"Mr. Chessman, I am going to give you a full and fair hearing . . . in the sense that you will be ac-

³Molly Kalin's appointment as an expert was later canceled at her own request, so that Chessman's plea for an independent, court-appointed expert would not be jeopardized. This decision cost her at least \$5,000, probably more.

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corded every opportunity to present all the evidence you have in support of your claims.

"But, Mr. Chessman, I also want to tell you that no matter how conclusive or overwhelming your showing is, it won't be good enough, for I intend to rule against you. . . . I may have to make 1,000, 2,000, or even 3,000 changes in the transcript, but . . . I shall hold these changes . . . really make no difference. . . . [R]egardless of how thoroughly repudiated it may be, I intend to say that . . . this is a good transcript and that Stanley Fraser was and is . . . specifically qualified. . . ."

Judge Evans, of course, never said that. But . . . that was the result reached.

I must write here that it is difficult to read the 5,527-page transcript with any attitude remotely approaching objectivity and not to agree with Chessman.

BUT there was more to come. On March 13, 1958, with Chessman back in San Quentin, Judge Evans appointed Stanley Fraser an "expert" on his own work *nunc pro tunc* — "now for then" — retroactively to November 27! This extraordinary ruling meant not only that Fraser would be paid several thousand dollars for his appearance as an expert witness. It meant also that his testimony as to the validity of his own work was given "expert" status.

Both sides agree that the *nunc pro tunc* means that on November 27, Judge Evans intended to make Fraser an expert. But on that date when Chessman challenged the court to let Fraser take all the time he needed and then to show that he could read the notes, Crail asked who would pay Fraser, and the court said, "I don't feel that the Court would be justified or could ask him to do it, I mean, as an order, and ask somebody to pay for his time." In other words, on the day on which Evans intended to make Fraser an expert, he could find no way to order Fraser to do expert's work or to pay him an expert's fee.

On December 3, six days after the judge first intended to make Fraser an expert, Chessman asked Fraser a question, and this passage ensued:

MR. CRAIL: Well, that is certainly calling for the conclusion of

the witness and would be expert testimony.

THE COURT: Yes, sustained. [Emphasis added.]

There are rules for appointing experts. They are supposed to have been given opportunity to study the material under discussion; Fraser testified, and Crail argued for the state, that he had not studied the notes for some years. Experts are supposed to be impartial; Fraser's work was precisely the point in issue, and he could hardly pass impartially on it. The *nunc pro tunc* order is the most fantastic thing in the fantastic Chessman case, with the possible exception of the fact that a higher court upheld it.

There have been legal moves since, but so far they have gone against Chessman. He has a new execution date now, his seventh. The date is October 23, 1959.

Chessman has had his "day in court," "focused squarely on the issue of the adequacy of the transcript," but it turned out to be a strange "day" indeed. And ironically, he has never had a legal opportunity to present the evidence of his innocence which he claims is now available. It would have been inadmissible in any of his court actions since he began his independent inquiry.

THERE are at least two more legal moves planned. Hope is not high.

In June of 1959, Governor Edmund Brown (the state's Attorney General through most of the time in which Chessman was fighting the state) commuted the death sentence of another man, also convicted under Section 209. No one in the state raised much fuss about that commutation — but every word Brown used in announcing his reasons can apply equally to Chessman.

And there is at least a hint that Brown would like to act in the Chessman case — but he would run a grave political risk in granting Chessman, the "monster," the "depraved predator," the "evil genius," even so much as a ninety-day reprieve. If the legal action by Chessman doesn't pan out, Chessman's life will be in Brown's hands, and it's doubtful whether the Governor will act unless some support comes from somewhere, and soon.

BOOKS and the ARTS

Joyce: Portrait Without Irony

JAMES JOYCE. By Richard Ellmann. Oxford University Press. 842 pp. \$12.50.

David H. Greene

JAMES JOYCE once referred to himself as "a man of small virtue, inclined to alcoholism." Like his many other remarks of self-disparagement the description was not without irony. Joyce had integrity and he never became an alcoholic, though few men have enjoyed the pleasures of alcohol more than he. But the irony of Joyce's remarks was not always apparent, and so the legend we are familiar with began to take shape when Joyce arrived in Paris from Trieste in 1920 to find himself the leader of a new movement in literature. The legend continued to grow because the only corrective, Herbert Gorman's biography, was written with Joyce's cooperation and under his eagle eye. Gorman complained to his publisher, "I will never write another biography of a living man. It is too difficult and thankless a task." Joyce frightened Gorman out of describing his life after 1922, rewrote parts of Gorman's manuscript, demanded omissions of unflattering references to himself and his family, and succeeded in modifying Gorman's picture of himself so that it tended to corroborate the legend of the persecuted artist which Joyce wanted kept alive.

Now, after seven years of research, Richard Ellmann—author of two excellent studies of Joyce's countryman W. B. Yeats—gives us a portrait of the artist as he actually was. Only in its unpretentious title and in the restraint with which it is written can *James Joyce* be described as a modest book. Its narrative is more than 300,000 words, ballasted with sixty pages of documentation and more than 2,000 citations of testimony. Mr. Ellmann identifies more than a hundred of Joyce's surviving relatives and acquaintances whom he interviewed. He has written a biography of Boswellian proportions which students of Joyce will consider definitive.

DAVID H. GREENE, whose *J. M. Synge: 1871-1909* (in collaboration with Edward M. Stephens) was published last spring by Macmillan, teaches Modern British Literature at New York University.

More than any other novelist Joyce seems to have taken the materials of his art directly from his own life. Consequently Mr. Ellmann is quite sound in his assumption that if you look hard enough at Joyce's life you will find just about everything—or the reason for it—in the pages of his novels. Joyce used people he had known, including himself, with a fine disregard for propriety and the laws of libel. In some instances he altered neither their names nor their facial lineaments, but in others the metamorphosis is so artful that Mr. Ellmann separates composite characters into their components so that he can identify for us their multiple prototypes. If we hadn't already suspected that the heroine of *Ulysses* was larger than life, Mr. Ellmann tells that five women, including Joyce's wife Nora, were required as models for Molly Bloom.

The legend of the persecuted artist was false insofar as Joyce largely created persecution where it did not exist and then manipulated it for the nourishment it gave him. When Stephen Dedalus, the autobiographical hero of Joyce's first novel, assumes his isolation he makes sure that he has a good audience he can tell it to. "When he rebels," Mr. Ellmann writes, "he hastens to let them know of his rebellion so that he can measure their response to it. He searches for disciples who must share his motives vicariously. . . . He buys his own ticket for Holyhead, but claims to have been deported. . . . Having stomped angrily out of the house, he circled back to peer in the window." He could not live in Ireland but he could not live without it either, so he brought a wife, a brother and a sister with him, and also the family portraits—like Aeneas with his household gods.

MONEY seems to have been one of the important problems in Joyce's life because he had such a disregard for it. The poverty he lived in for many years was real enough, but even after he started receiving patronage from Harriet Weaver—Joyce admitted once that in one period of less than five years she had given him £8500, more than \$40,000—he was still unable to live without financial emergencies. Mr. Ellmann remarks that Miss Weaver's benefaction "did not make Joyce rich; no amount of money could have done that;

but it made it possible for him to be poor only through determined extravagance."

Although Mr. Ellmann's method is one that draws no distinction between the man and the writer, there are separate chapters of criticism on Joyce's major works. Mr. Ellmann is quite right in calling "The Dead"—Joyce's first song of exile—a linchpin in his work. It was also an affirmation of Irish nationalism and a prediction that Joyce would come round, in Mr. Ellmann's phrase, to "sharing Ireland's primitivism." Of that bewildering book *Finnegans Wake*, which Mrs. Joyce called "that chop suey he's writing," Mr. Ellmann admits that it might have been more "direct" but that Joyce did not appear to have any alternative to writing it as he did. All through his work he had moved gradually from the waking consciousness to the mind asleep. "That the great psychological discovery of this century was the night world he was, of course, aware, but he frowned on using that world as a means of therapy. Joyce's purpose was not so didactic; he wished, unassumingly enough, to amuse men with it."

MR. ELLMANN's sympathetic treatment of Nora Joyce will be appreciated because she needs and deserves to be seen in the light of fact. When Joyce met her in 1904—he immortalized his first date by making it Bloomsday—she was a country girl from Galway, with little formal education. She remarked in later life, "You can't imagine what it was like for me to be thrown into the life of this man." Why one of the most rarified minds of this century, as Mr. Ellmann describes Joyce, should have selected her as his wife may have puzzled many people. But Mr. Ellmann makes it clear that his choice could not have been sounder. Joyce once complained that of all his friends only "two ill-equipped women, to wit, Aunt Josephine and Nora, seem to be able to get at my point of view."

Nora had a supreme indifference to her husband's work which must have been galling at times to a leader surrounded by disciples. Joyce told Frank Budgen, "I have an effect of some kind on people who come near me and know me and who are my friends. But my wife's personality is absolutely proof against any influence of mine." Jung complimented Joyce for the profound knowledge of the psychology of women

which lay behind Joyce's portrayal of Molly Bloom. But Nora put it differently: "He knows nothing at all about women."

One finds it hard to believe that if she treated Joyce like an ordinary man she did not know all the time that he was not ordinary. When someone asked her, after her husband's death, if she had known André Gide she replied, "Sure, if you've been married to the greatest writer in the world, you don't remember all the little fellows." And to her sister in Galway she wrote, after Joyce's death in 1941, "My poor Jim—he was such a great man." Few people will now deny that he was a great man or even that he was the greatest novelist of our century. But for the first time with Mr. Ellmann's biography we can also believe that he was very much a human being.

Gentle Knife

A KINDLY CONTAGION. By Walter Toman. Bobbs-Merrill Co. 218 pp. \$3.95.

Robert Hatch

WALTER TOMAN, a psychologist and professor of that subject at Brandeis University, is possessed by an exuberant imagination which he must be at pains to curb in his scientific work. As a respite from this self-denial, perhaps, he writes very brief short stories of fractured reality which, when they hit the mark, lodge permanently in the reader's mind. His fables, *contes*, anecdotes—whatever it is they should be called—occasionally suggest Kafka or, more gently, Thurber, but the resemblance is most often illusory: there is a grim jauntiness about Toman at his best that does not pigeon hole.

Not that he is always at his best. Because, as I suppose, Toman writes stories for the fun and exercise of it, and not because his life depends on it, he seems not to care when he is off his game. All the pieces in *A Kindly Contagion* are disconcerting, but some are so in ways not intended by the author. Thus, "The Do-It-Yourself Living Space," in which the tenants of a large apartment house gain additional room by breaking through walls and seizing the adjacent territory, suffers from a too-insistent working out of the international parallels; and "A Plea for Paternity," in which a cuckold begs for the right to believe that at least one of his children in his own, is no more than conventional pathetic irony. There

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may be eight or ten tales in the book that fail in some respect, but the book contains thirty-two entries (I said they were short) and the balance is markedly in our favor.

There is the minatory history of a flavorless young man named Henry King who became King Henry the First by the banal process of writing his flavorless name on every available surface; there is the cold-minded philanthropist who throws dinner rolls from his hotel balcony to study the reactions of a crowd receiving manna in limited quantity, but who loses his enthusiasm for the study when some of his subjects develop the gift of flight; there is the inmate who argues with awful persuasiveness that one of our forward-looking foundations might well subsidize an international exchange of lunatics. Once on a streetcar the passengers began offering one another their seats and went on from that to fondly stroking one another—unfortunately they were crisply rebuffed when they carried the practice to the sidewalks. A loving couple is frustrated by the armor they feel constrained to wear, and a lion tamer—he is a hauntingly familiar type—suffers a predictable accident because he insists upon inflicting increasingly painful indignities on the animal while his head is in its mouth.

OTHER readers will have other favorites—I have not exhausted mine, but I don't want to go through the book skimming the cream off Toman's jests. If one must sum up his attitude, it is that he has found man quite incompetent at the job of being human, but nevertheless cherishes the species for its extraneous qualities of entertainment, surprise and a kind of woolly sweetness. He is most effective when he cracks reality, but leaves it still in the frame, and his best stories are beguiling and rewarding quite aside from whatever moral plums may be embedded in them.

Toman's yarns retell very readily, and shortly we shall be hearing them, somewhat mangled, at the more knowing parties. References to Busse's World Theater, or Bob the Cop, or John De-Haven, the inventive mortician, will be dropped with increasing frequency as the word spreads; it might be well to get them first from the author's mouth.

Toman is an Austrian and writes his fictions in German, but he has found in Harry Zohn, a colleague at Brandeis, the perfect translator. The prose is clean and idiomatic, but faintly foreign, like the speech of one of those delightful Europeans who make us proud of our language by speaking it so handsomely.

Kenneth Rexroth

Bird in the Bush

In this collection of what he calls "obvious essays"—on literature, art, cultural movements old and new—Rexroth ranges from jazz and D. H. Lawrence to Sung painting and the Chinese concept of science, from Edward Gibbon to Henry Luce. Included in this collection of eighteen essays are "Rimbaud as Capitalist Adventurer", "Samuel Beckett and the Importance of Waiting," "The Hasidism of Martin Buber," "The Plays of Yeats." An ebullient iconoclast, Rexroth here deflates fashionable reputations and seeks out neglected values with energy and insight. He combines prodigious erudition in many fields of world culture with a colloquial approach which makes the abstruse simple and the patterns of contemporary thought as exciting as fiction.

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The Monster and the Mirror

NOTES OF A SOVIET DOCTOR. By G. S. Pondoëv. Consultants Bureau. 238 pp. \$4.95.

George A. Silver

THE MORE the Americans and the Russians attempt to emphasize their differences, the more the similarities emerge. It is embarrassingly trite to be forced to declare again "Human, all too human!" but it may be as useful as it is necessary. This recent book by a Soviet doctor is a case in point.

The introduction (by an American physician) underlines the value of the book to American readers, throwing in only a slight barb: "The reader will encounter three distinctive personalities—an urbane, well read, and broadly experienced doctor, whose counterpart is to be found among the best the world over; a doctrinaire who pontificates a straight line orthodoxy; and an illuminated humanist who is committed to—and endeavoring to communicate to his professional successors—man's aspirations for the true, the good, and the beautiful!" Then a cautionary word: "It is this order of paradoxical juxtaposition of bald fact and moonshine interpretation that makes the Notes sometimes read like the notations of a split personality." Thus the reader will beware of Marxist dogma in the author's proud emphasis on Russian contributions to medicine. But except for an occasional whistle, the Marxism never really gets in the way.

The fact that doctors are subservient to the State, and that all citizens are entitled by right to medical care, without charge, does not seem really to separate the Russian doctor from his American counterpart. The concept of medicine as science and skill is universal. "If we compare the modern doctor, trained in biological and medical science and able to make use of medical instruments and laboratories, with the doctor of antiquity, possessing only his own senses, we can understand why the activities of the latter were looked upon as an art." And, more and more, American medical journals would publish remarks such as this: "There is no sickness in a man but there is a sick man." Or "Disease and the environment constitute an indivisible entity: to treat them separately implies falling into a profound methodological error."

Furthermore, not only does the doctor

GEORGE A. SILVER, M.D., is chief of the Division of Social Medicine at Montefiore Hospital, New York.

see his profession very similarly in the two countries, doctors themselves should be seen similarly: "This 'something' is by no means supernatural, but is perfectly natural. It is those traits of character which the patient craves to see in his doctor: gentleness, tact, warmth, kindness, self-sacrifice, sympathy, ability to console and reassure and so on."

And patients in the two countries apparently have the same damnable habits: "When he is not cured as quickly as he would like, the despairing patient begins to wander from one doctor to another; some try in this way to confirm the first doctor's diagnosis by that of the second; others hold the view that one head may be good but two are better; yet others, to use the specific expression of the patient, say 'they are clutching at straws,' although in the

great majority of cases nobody believes them to be drowning; these 'clutchers' will listen to any hearsay advice, even so far as having dealings with quacks."

The student must learn to deal with patients *individually* (in the Soviet Union!): "Frivolous patients . . . can unfortunately be restrained from excesses by one thing only—frightening—and not by good and sensible advice"; and he sternly admonishes, "It is . . . inadmissible in any case to express one's thoughts aloud: 'Heart and aorta enlarged, murmur at the apex, accentuation of the first sound' and so on." And, "Cries, sobs, roars and tears—these are the usual reactions of the sick child, and whoever cannot endure them should not be a children's doctor."

The book is charming in its formal and serious dedication to medicine as a calling, and profoundly moving in the implication of the common humanity of doctor and patient, U.S.A. and USSR.

Have We Been Americanized?

Oreste F. Pucciani

AMERICANS have always been proud of the fact that there is no such thing as an American orthodoxy, no code for behaving like an American. Our national character would seem to be best defined by the sum of our differences, and traditionally we have seen these differences as indicating our devotion to freedom, even as a guarantee of the survival of freedom among us. Now there are signs that this is changing; that freedom in America is being measured increasingly by standards of uniform behavior which an older generation would have judged conformist. Such at least are the implications of the many studies that analyze our collective ways and suggest at least that we are no longer the individuals we once were. Such also is more than implied in a recent brilliant study of American civilization by Professor Cyrille Arnavon, *L'Américanisme et nous*, which has just been published by Del Duca in France. As the French title indicates, Professor Arnavon is alarmed lest America, having "Americanized" itself, should now dogmatically Americanize the rest of the world, and France in particular.

L'Américanisme et nous cannot be put aside on the pretext that it is another example of bigoted French "anti-Americanism." It is on the contrary a sober and scholarly study of our civilization by a man who has devoted his life to the task. At present the French Cultural Attaché in London, Professor Arnavon

is the author of a full-length history of American literature; he has written dozens of articles and several volumes on the American novel. He was formerly Professor of American Studies at the Universities of Lyon, Lille and Dakar. He enjoys, moreover, the unusual distinction of having taught American literature at Columbia, Harvard and New York Universities. Altogether, if America can be understood by a Frenchman, it can be understood by Professor Arnavon.

Professor Arnavon's thesis about America can be summarized as follows: "Americanism" is a doctrine which implicitly contains the seeds of an Americanization of the world. Since World War II, America's position has evolved, officially at least, toward a conservatism which is often reactionary and which has made America unfit to provide leadership for those forces of popular liberation which are now seeking expression in the world. Since 1945 "The Great Change" has brought with it attitudes and policies which are seemingly a direct reversal of more traditional American attitudes. America has gradu-

ORESTE F. PUCCIANI is the author of *The French Theatre Since 1930*. He teaches contemporary French literature at the University of California, Los Angeles, but is at present on leave in France, where he is working on a study of modern French writing.

ally come to occupy the contradictory position of a great power which, founded in revolution, is now slowly becoming reactionary. Our attitudes are there for the world to see: the aid we have given to dictatorial regimes in South America; our opposition to popular liberation movements in Greece and Spain; our policies in the Near East; our hysterical response to communism. Professor Arnavon is not the first to have been struck by American paradoxes nor to have pointed out the irony implicit in our becoming, of all nations, the prototype of *status quo* philosophy. But he is one of the first to probe beneath contradictions and to ask if perhaps the "American Heritage" is entirely as liberal, revolutionary and dedicated to the principle of freedom as we always assumed.

IN THIS respect, *L'Américanisme et nous* is a more profound book than many in both America and France which have inspired it. Turning to American history, Professor Arnavon finds cause to believe that "Americanism" is a coherent program of American domination in the world. It is nothing less than American capitalism advanced to a philosophical position and bolstered by an unscrupulous appeal to "Manifest Destiny." The analysis goes still deeper. There is something shallow and empty, Professor Arnavon feels, about the program which "Americanism" implies. This is not, however, because America as a civilization is perforce shallow and empty. It is rather that "Americanism," which by no means represents our whole culture, condemns itself to a false position by the fact that it is, at bottom, no more than an economic doctrine—a method—posing as an ideology. Perhaps I am pushing the author's thought too far, but he would seem to imply that American capitalism, when sufficiently hard pressed, reveals itself for what it is: a doctrine of expediency. Anchored in the past and mortgaging the future, "Americanism" is a desperate enterprise of success for its own sake. In order to make itself respectable, it hides under many guises: liberalism, free enterprise, even God. Yet at bottom it remains singularly sterile. It fails in those areas of value and spiritual richness in which ideologies must be tested. The great forces which have made America were often marked by singular discrepancies. Even the Puritan mind, with its hypocrisy, its pragmatism, its primitive Manicheism, its literal supernaturalism was already, in its own way, an "American" phenomenon. On the one hand the Kingdom of God; on the other hand the World. The two points of view could

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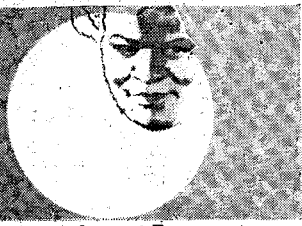
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no more hope to meet than "Manifest Destiny" could hope to become reconciled with "Self-determination."

What emerges finally from Professor Arnavon's study is the rather chilling prospect of a modern doctrine, "Americanism," which has absorbed the tensions and contradictions of the past and fused them into a single concept. The contradictions are now expressed in a rhetoric which permits us to rationalize as "idealism" our own brutal responses to utterly realistic situations. The resulting shabbiness shows itself for what it is: American bad faith choosing the immediate over the ultimate. Professor Arnavon's views would find practical application in the vogue—it can hardly be called more—of self-criticism which is sweeping over us at this moment. We criticize our schools, our philosophy, our ultimate goals, even our religious needs. Yet we somehow do not get down to essentials. Even Riesman and C. Wright Mills have been better diagnosticians than surgeons. Why is this? The bitter possibility remains that, if we do not get down to essentials, it is because we do not intend to.

IT SHOULD be clear by now that such questions emerge from reading *L'Américanisme et nous* because Professor Arnavon is not a dispassionate observer, but has himself taken up a position. It is the position of the French intellectual, traditionally allied to the ideal of democratic revolution and doctrinaire liberalism. It might be described as radical rationalism. Professor Arnavon's essay often recalls, though it is less extreme, the positions taken by Sartre, Simone de Beauvoir, or Camus: non-Communist of the Left.

Such a position, unpopular in the United States, has the merit of revealing a doctrinal struggle in the world. It makes clear that questions of theory cannot be avoided indefinitely; that there are social and historical consequences to the act of thinking itself. We may hide from this fact for a long while, in the pious hope that our differences will dissolve. But sooner or later we are condemned by history and by the world to assume responsibility for our contradictions, to commit ourselves to action and to be judged. As pragmatists, we Americans have long felt that a basic functionalism was sufficient test of our intellectual stamina and moral good faith. We have, with considerable pride and with what we called wisdom, avoided the entangling alliances of thought and the hair-splitting theological quarrels of intellectualism. We now discover, through such books as *L'Américanisme*

et nous, that the world is judging us not only on the basis of our atomic power, but according to the coherence of our thinking.

THOUGH there are signs that the American intellectual is beginning to bestir himself, he has been singularly lazy in his most essential work. Perhaps this has been because, as Professor Mills has suggested, the American intellectual, for all that he is stigmatized as an "egg-head," has not been as alienated from the operating society as his Continental counterpart. The question which then inevitably arises is: Why not? For what ends has the American intellectual allowed himself to become institutionalized? Why is there, as Professor Barzun has pointed out, such a remarkable lack of concern for intellect even in our universities? Why is the American intellectual seemingly incapable of coming to grips with this problem? Why, for that matter, does Professor Barzun himself not come to grips with it after he has pointed it out? It is a curious fact—and Professor Arnavon's book is a case in point—that the French intellectual, who is in his person far more "institutionalized" than the American, is still more independent, more critical, more fearless in pursuing his theoretical work.

These are some of the questions which

Inside Athens

(Note on a Vanished Forensic Art)

Before Dale Carnegie began
To demonstrate that any man
Subscribing to a weekly plan
Could learn to wield the gavel,
Demosthenes, an earnest Greek,
Who had a tendency to squeak,
Had disciplined himself to speak
Successfully with gravel.

While walking on the beach alone,
He'd stuff his mouth with bits of stone,
And then, in lieu of microphone,
He'd orate to the ocean;
Till one damp day a vagrant breeze,
Blew on his neck and made him sneeze,
Evoking in Demosthenes
A fascinating notion:

From that day hence, whenever he
Addressed a crowd on liberty
And someone in the balcony
Yelled, "Boo! Sit down, you rebel!"
Demosthenes would not reply,
But fixed the heckler with his eye,
And puffing out his cheek, let fly
A swift, unerring pebble.

(N.B. The Grecian word for it
Was *kachlex*, or, in English, "grit.")

H. J. GOTTLIEB

The NATION

L'Américanisme et nous will raise in the minds of thoughtful readers. Broadly stated, they might be summed up as follows: Just what does it mean when man asserts that he is free? Perhaps one of the ironical side effects of this remarkable book will be the discovery, for Americans, that "*nous*" refers not to the French at all, but to ourselves.

THEATRE

Harold Clurman

AFTER seeing *The Gang's All Here*, Jerome Lawrence and Robert Lee's political melodrama (*Ambassador*), I felt somewhat like the street orator who challenged "Do you believe in God? Take either side."

This does not mean that I had several sharp reactions of divergent nature or that I had no reaction at all. What I felt was a sort of benign neutrality. But out on the sidewalk after the second act a critic I respect indicated that he thought the play unusual — and "advanced" — for these days: meaning something to be encouraged. In the theatre we are constrained to a considerable degree of relativism in our judgments.

The Gang's All Here is the story of a nonentity elected to the Presidency of the United States in the twenties through the machinations of a group of Ohio racketeers who constitute his Cabinet. They hornswoogle the unfortunate man into betrayal of the country and finally into a moment of "greatness" — which consists of committing suicide.

As melodrama, the play, though trim and never uninteresting, is not particularly tense; as journalism it is not sufficiently detailed; as sociological interpretation, primitive with a dash of hortatory patriotics; as character study, thinly sentimental. Yet a theatre critic is disinclined to dismiss the play out of hand. For the earnest professionals and many theatregoers these days seem to suffer a sense of guilt about the backwardness of our stage in reflecting the contemporary scene, particularly in regard to what might be considered controversial matters.

While there is psychological justification for the uneasiness, it does not seem to me concretely sound. Our theatre's impotence to confront reality is surely a symptom of our general shrinking from any public discussion that might involve decided disagreement, but it does not follow that we ought to demand more topical drama — thesis plays

about such immediate issues as disarmament, atom tests and the like.

In addition to the fear and confusion which have bedeviled us in the past ten years or more, our stage has been increasingly thwarted by disastrous economics, so that producing a play unconventional in content as well as in form has become almost quixotic. But quite apart from this, there has developed of late something like a rooted habit of discussing everything in swift and facile generalizations — *Time* fashion — so that the high school- and college-educated citizen knows something about everything — art, science, politics, medicine, foreign affairs, etc. — and precious little about anything.

Nothing seems to be experienced. We harbor a multitude of opinions and possess almost no convictions. Even our doubts are doubtful. The noise about us — which includes more information in the head of a schoolboy than Aristotle could ever have absorbed or acquired — renders us essentially ignorant even on the one subject with which we might be familiar — ourselves.

Hence American history on our stage is usually juvenile and boring. Our memory of the recent past is so sketchy that not only have most theatregoers forgotten that the material of *The Gang's All Here* was treated years ago in the novel, *Revelry*, and its dramatization, but I heard a middle-aged lady in the audience having a joke in the play explained to her by being reminded that there was Prohibition during the twenties. So that finally a play about such recent events as the scandals of the Harding administration — which I believe did not really shock the country, any more than have more recent scandals — becomes a play about a good-natured boob betrayed by pals with no respect for public office. We look on undisturbed as the poor guy in his death throes voices the sentiment that nothing like his situation will occur in the future.

It is not "daring" themes, the strong stuff of general dispute, we need so much in our theatre as dramatists to deal with what they truly feel and know. They cannot make any real con-

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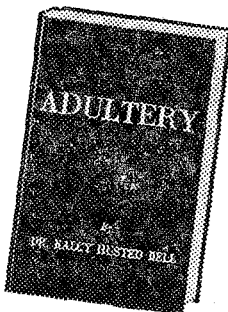
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tact with us through research on "important" subjects. Serious drama is not serious through studied hearsay and good intentions. The way to get under your audience's skin is first to get under your own. The American playwright is too often a man whose spiritual range, no matter what subject he has chosen, is confined to the limits of Shubert Alley. He does not seem to be vitally engaged in anything but making a good living at his shrinking profession.

The one thing I unqualifiedly enjoyed in *The Gang's All Here* was Melvyn Douglas in the central role. Douglas is that rare and stalwart phenomenon: a leading player who is always doing his job—on the road or in town, whenever and wherever he has an appropriate role in a play of some discernible merit. This hardy dedication gives the character of President Griffith P. Hastings in *The Gang's All Here* a dimension the authors must have hoped for.

ART

Fairfield Porter

THE new show at the Museum of Modern Art is held together by a tenuous theme. It is called "New Images of Man," and like most themes, it is forced, and therefore interesting. The common superficial look of the exhibition is that it collects monsters of mutilation, death and decay. It is less an exhibition for people interested in painting and sculpture than an entertainment for moralists. It has a painterly-plastic side and a literary side. The painters are Appel, Bacon, Diebenkorn, Golub, Balcomb Greene, de Kooning, Lebrun, McGarrell, Müller, Oliveira and Pollock; the sculptors, Armitage, Baskin, Butler, Campoli, César, Paolozzi, Richier, Roszak, Westermann and Wotruba. Dubuffet and Giacometti appear in both categories. In the introduction to the catalogue, Peter Selz, director of the exhibition, says, "Like the more abstract artists of the period these imagists take the human situation . . . rather than formal structure, as their starting point." And in the preface, Paul Tillich, the theologian, writes: "The image of man became transformed, distorted, disrupted and it finally disappeared in recent art. But as in the reality of our lives, so in its mirror of the visual arts, the human protest arose against the fate to become a thing."

The most monstrous creations are contributed by the sculptors, and the most horrible paintings by the British Francis Bacon. His gratuitous horrors illustrate the conclusions of untold stories: why is the Cardinal screaming (or maybe yawning) in his brass cage; and Van Gogh's shadowed face, is it mutilated by a leprosy? After a while Bacon's images become absurd. With a

very few notable exceptions the English have been literary artists, at least since Blake. Their strongest impact or most haunting memory comes from a suggested story. For instance, Paolozzi's muddy concretions of broken clockwork are richer for the suggestion of the aftermath of a bombardment. Paolozzi is British. But Dubuffet's *Knight of Darkness* or César's incomplete torsos are essentially plastic and say their say in terms of volumes. They are French. So is Germaine Richier. She makes human figures of insect vitality from the slash left by the lumberman. She sees figures in the forest. Hers is not so much a new view of man as an anthropomorphic view of nature. Baskin is American. His smaller than life-sized, unemployed fat men come out of a Turkish bath. They have none of the eloquence of his statement: ". . . Our human frame, our gutted mansion, our enveloping sack of beef is yet a glory. . . . Between eye and eye stretches an interminable landscape."

THERE are straight monsters, and there are formal ambiguities. There is the ambiguity in a Balcomb Greene painting about what is light and what is form. There is the ambiguity of making something real by looking to one side. In this way a figure by Giacometti is real because its thinness and height bound the space around it: its surface is infinity's single limit, as zero is the single limit of the series of all the numbers. Instead of feminine grace, de Kooning's women have the grace of the stroke of the brush at the end of his arm. Diebenkorn's ambiguity is that one is doubtful, not of what anything is, but only of where it is: the definiteness of structure comes from the indefiniteness of spatial relations.

To react against formalism is to begin

a new formality. It would be difficult to say for sure whether the first motivation of these artists is formal structure or the content of the human predicament. For instance, Golub's archaic classical giants covered with an artificial patina, or Oliveira's re-rendering of a Renaissance painting, show neither "total commitment" nor a concern with the human predicament. Neither do they show any clear preference for formal structure.

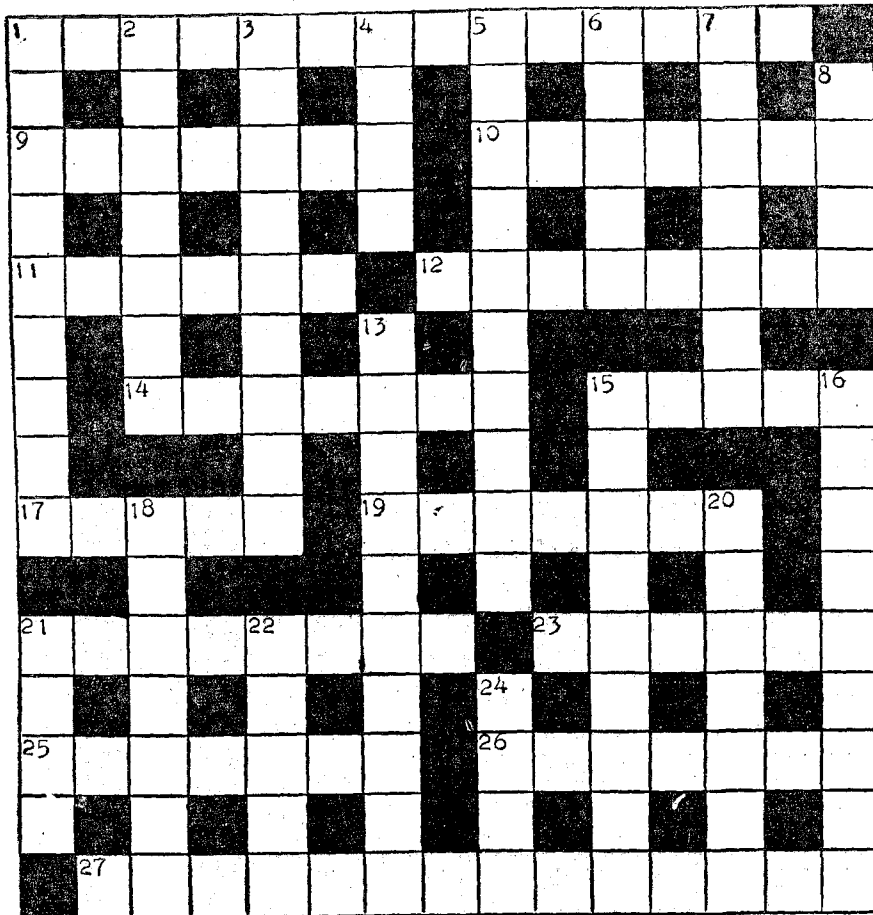
Or if one takes as his subject matter the pit of Buchenwald, as Lebrun does, one takes for subject matter something safely remote from the smallness of daily-life experience. Are these artists protesting against the terrors of the modern world, or against a fear of not being accepted? Are they protesting the dehumanization of modern man, or are they afraid of the responsibility attached to an assertion of individuality? Do they show man-become-a-thing because they are afraid of it, or because they wish to be so themselves; because they wish to be ordinary? The violence of their subject matter may very well hide a fear of appearing ridiculous. The violent image of man has the purpose of making a creation acceptable to critics, it gives an easy subject matter to critical writing, for these paintings and sculptures seem to mean something profound in proportion to the amount of distortion and the violence of their appearance, and in this way the artist clears himself from a conscience made uneasy by his choice to be only an artist in a society where moral threats emanate from sociologists and practical threats from politicians. The artists want to be as needed as scientists or generals or bureaucrats or entertainers. The new image of man may be a disguise, an excuse, an apology for the artistic profession.

On hearing Stavrogin's confession of his ugly crime, Dostoevsky's priest commented that fear of ridicule would prevent him from making his confession public. And in the same way the artist's indifference to moral censure covers up his fear of ridicule. He may seem to be courageously facing the human predicament, but this courage saves him from the harder necessity of accepting the difficulties of art and public contempt. It has probably been like this only since the artist was told that he is a prophet, and that art is a substitute for religion. His job would be easier to face fruitfully if he did not think that he was supplying a lack that it is not his business to supply. The fate to become a thing may not be so terrible as the pressure to become a seer.

FAIRFIELD PORTER is a painter and the author of *Thomas Eakins*, recently published by George Braziller.

Crossword Puzzle No. 838

By FRANK W. LEWIS



ACROSS:

- 1 Two-tun description of older ale, rubbed the wrong way. (6-8)
- 9 See 15 across
- 10 Game, not to be confused with a sparker. (7)
- 11 A bad actor, perhaps, but may drive the point home. (6)
- 12 Walk in London? It might be barred. (8)
- 14 Acted like a Yankee, limned pointlessly? (7)
- 15, 9, 21 down, and 23 How the poet started out, but didn't anticipate the fall. (1, 4, 2, 5, 4, 3, 3,)
- 17 In Peer Gynt Suite, "Ase's Death" doesn't make one uncomfortable. (5)
- 19 Gypsies traditionally wear one. (7)
- 21 Likely to run, if it 15 across with another division. (3, 5)
- 23 See 15 across
- 25 Saw, perhaps, in the sort of hard work the city provides. (7)
- 26 One way to separate the stranded. (7)
- 27 Harold went with a question of earthly content. (4, 2, 3, 5)

DOWN:

- 1 Reaper speed? (5, 4)
- 2 Defenseless with limbs lopped off at the trunk. (7)

- 3 With taking ways? (9)
- 4 and 6 Ran after an accompaniment to 9, perhaps like a cowboy. (9)
- 5 The left portions of the rider's name? (10)
- 6 See 4 down
- 7 Look at what might be on the line! It's nonsense! (7)
- 8 and 24 Once Huns might have been, if anapprochable in likeness. (8)
- 13 Turning away from what George couldn't tell to the country? (10)
- 15 Rises with Paddy's worry, perhaps. (5, 4)
- 16 Put up with the retotaled correction. (9)
- 18 The language of the obligations we dishonor. (7)
- 20 A mass of 21 across with the best part missing. (7)
- 21 See 15 across
- 22 How the occupants of 12 sleep. (5)
- 24 See 8 down

SOLUTION TO PUZZLE NO. 837

ACROSS: 1 In the meantime; 10 Deviate; 11 Cheerio; 12 Parboiled; 13 Aisle; 14 Inbred; 16 Infidels; 19 Neighbor; 20 States; 22 Meade; 23 Secretive; 25 Crimson; 26 Roomers; 27 Transparently. DOWN: 2 Never; 3 and 9 Head over heels in love; 4 Meekly; 5 Acceding; 6 The Man in the Moon; 7 Mare's nest; 8 Adoption; 15 Brigadier; 17 Suspense; 18 Loosen up; 21 Scorer; 22 Mock; 24 Ideal.

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